

REMARKS

Applicant respectfully requests reconsideration of the present application in view of the foregoing amendments and in view of the reasons that follow.

Claims 1-4, 6, and 8 are currently being amended.

This amendment adds, changes and/or deletes claims in this application. A detailed listing of all claims that are, or were, in the application, irrespective of whether the claim(s) remain under examination in the application, is presented, with an appropriate defined status identifier.

After amending the claims as set forth above, claims 1-10 (10 claims) are now pending in this application.

The Office Action of December 31, 2003 and the references cited therein have been considered. In response to the rejections stated in the Office Action, Applicants provide the following comments. As demonstrated, however, each of the rejections is believed overcome, with the application being placed in condition for allowance. Accordingly, reconsideration and allowance of this application is respectfully requested.

On page 2, paragraph 3, the Examiner requires a formal drawing. In response, Applicants direct the Examiner's attention to the formal drawings that were submitted with the substitute specification on May 31, 2001. For the Examiner's convenience, a copy of those formal drawings are attached to this amendment.

On page 2, paragraph 5 of the Office Action, the Examiner has rejected claims 1-10 under 35 U.S.C. §112, second paragraph. The Examiner believes that there is an ambiguity in the claims with respect to "computer system" and "system function." In response, Applicants have amended claims 1-4, 6 and 8 to clearly indicate a computer system and the system function. For further clarification, Applicants submit that any system function in the computer system can be monitored and assessed in accordance with the disclosure. (See paragraphs 12 and 13 of the substitute specification as well as paragraphs 29 and 30 of the substitute specification.) Applicants now believe that the claims, as amended, particularly

point out and distinctly claim the subject matter which Applicants regard as the invention. Therefore, Applicants respectfully request that the Examiner withdraw her rejection of claims 1-10 under 35 U.S.C. §112, second paragraph.

On page 4, paragraph 7 of the Office Action, the Examiner has rejected claims 1-10 under 35 U.S.C. §102(e) as being anticipated by Connelly, et al (USPN: 6,594,786). In pages 4, 5, 6 and 7, the Examiner cites various sections of Connelly to support her contention that Connelly anticipates that which is disclosed and claimed in the present application. Applicants respectfully traverse the Examiner's position.

In response, Applicants submit that each of the independent claims (claims 1, 2, 3, 4, 6 and 8) require that the information concerning the system function in the computer system must be assessed (analyzed) to determine "whether said change that has taken place, or said change that is intended to take place would result, in a change of terms of availability of the system function". In contrast, Connelly, as best understood by the Applicants, merely monitors computer availability of one or more computers and not a system function. There is no teaching or suggestion in Connelly to analyze whether an unavailable component is needed for a system function.

Contrary to the Examiner's characterization of Connelly, Connelly merely contains a list of whether or not a computer or a computer node is available in the computer system. It does not determine whether or not the change in the state of the component of the computer system results in a change in the terms of availability of the system function. Therefore, independent claims 1-4, 6 and 8 are not anticipated by Connelly since Connelly does not teach the assessment (analysis) of whether a change in a component would result in a change of terms of availability of a system function in a computer system. Likewise, since dependent claim 5, which depends from independent claim 2, dependent claim 7 which depends from independent claim 6, dependent claim 9 which depends from independent claim 3 and dependent claim 10 which depends from independent claim 4, also are not anticipated by Connelly. Accordingly, Applicants respectfully request that the Examiner withdraw her rejection of claims 1-10 under 35 U.S.C. §102(e).

Applicants have attempted to respond to the several rejections of the claims to the extent necessary to correct any ambiguity cited by the Examiner and to address the prior art cited by the Examiner with the intent of not limiting the scope of the invention protection accorded by the patent laws and these claims any further than absolutely necessary. It is respectfully submitted that each outstanding rejection has now been overcome and that each claim is in condition for allowance. Reconsideration under 37 C.F.R. §1.111 and §1.112 is respectfully requested.

Applicant believes that the present application is now in condition for allowance. Favorable reconsideration of the application as amended is respectfully requested.

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 06-1447. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 06-1447. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant hereby petitions for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 06-1447.

Respectfully submitted,

Date 03-31-04

FOLEY & LARDNER LLP
Customer Number: 26371
Telephone: (414) 297-5776
Facsimile: (414) 297-4900

By 

James A. Wilke
Attorney for Applicant
Registration No. 34,279